

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

JAESON BIRNBAUM,

Defendant.

No. 21 Civ. 8047 (JMF)

ECF Case

**JUDGMENT AS TO DEFENDANT JAESON BIRNBAUM**

The Securities and Exchange Commission having filed a Complaint and Defendant Jaeson Birnbaum having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Judgment; waived findings of fact and conclusions of law; and waived any right to appeal from this Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;

- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

## II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)] and Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)], Defendant is prohibited from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall pay disgorgement of ill-gotten gains, prejudgment interest thereon, and a civil penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. The Court shall determine the amounts of the disgorgement and civil penalty upon motion of the Commission. Prejudgment interest shall be calculated from July 21, 2017, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). In connection with the Commission's motion for disgorgement and/or civil penalties, and at any hearing held on such a motion: (a) Defendant will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Defendant may not challenge the validity

of the Consent or this Judgment; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for disgorgement and/or civil penalties, the parties may take discovery, including discovery from appropriate non-parties.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the allegations in the complaint are true and admitted by Defendant, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under this Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Judgment.

VIII.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Judgment forthwith and without further notice.

Dated: October 12, 2021, \_\_\_\_\_

  
UNITED STATES DISTRICT JUDGE

All deadlines are hereby STAYED. In light of that, the conference scheduled for December 17, 2021, is ADJOURNED sine die. By January 13, 2022, the parties shall file a joint letter proposing a plan for how this case shall proceed. SO ORDERED.

October 12, 2021

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

JAESON BIRNBAUM,

Defendant.

No. 21 Civ. 8047 (JMF)

ECF CASE

**CONSENT OF DEFENDANT JAESON BIRNBAUM**

1. Defendant Jaeson Birnbaum (“Defendant”) waives service of a summons and the complaint in this action, enters a general appearance, and admits the Court’s jurisdiction over Defendant and over the subject matter of this action.

2. Defendant has pleaded guilty to criminal conduct relating to certain matters alleged in the complaint in this action. Specifically, in *United States v. Jaeson Birnbaum*, Crim. No. 21 Cr. 0595 (PAC) (S.D.N.Y.) (“*United States v. Birnbaum*”), Defendant pleaded guilty to securities fraud in violation of 15 U.S.C. §§ 78j(b) & 78ff, 17 C.F.R. § 240.10b-5, and 18 U.S.C.

§ 2. In connection with that plea, Defendant admitted the facts set out in the transcript of his plea allocution that is attached as Exhibit A to this Consent. This Consent shall remain in full force and effect regardless of the existence or outcome of any further proceedings in *United States v. Birnbaum*.

3. Defendant hereby consents to the entry of the Judgment in the form attached hereto (the “Judgment”) and incorporated by reference herein, which, among other things:

(a) permanently restrains and enjoins Defendant from violations of the

Securities Exchange Act of 1934 (the “Exchange Act”) Section 10(b) [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], and Section 17(a) of the Securities Act of 1933 (the “Securities Act”) [15 U.S.C. § 77q(a)]; and

(b) permanently prohibits Defendant, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)] and Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)], from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

4. Defendant agrees that the Court shall order disgorgement of ill-gotten gains, prejudgment interest thereon, and a civil penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act. Defendant further agrees that the amounts of the disgorgement and civil penalty shall be determined by the Court upon motion of the Commission, and that prejudgment interest shall be calculated from July 21, 2017, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). Defendant further agrees that in connection with the Commission’s motion for disgorgement and/or civil penalties, and at any hearing held on such a motion: (a) Defendant will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Defendant may not challenge the validity of this Consent or the Judgment; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn

deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for disgorgement and/or civil penalties, the parties may take discovery, including discovery from appropriate non-parties.

5. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

6. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Judgment.

7. Defendant enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

8. Defendant agrees that this Consent shall be incorporated into the Judgment with the same force and effect as if fully set forth therein.

9. Defendant will not oppose the enforcement of the Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

10. Defendant waives service of the Judgment and agrees that entry of the Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty days after the Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Judgment.

11. Consistent with 17 C.F.R. § 202.5(f), this Consent resolves only the claims



asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that he shall not be permitted to contest the factual allegations of the complaint in this action.

12. Defendant understands and agrees to comply with the terms of 17 C.F.R. § 202.5(e), which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings." As part of Defendant's agreement to comply with the terms of Section 202.5(e), Defendant acknowledges the guilty plea for related conduct described in paragraph 2 above, and: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; (ii) will not make or permit to

be made any public statement to the effect that Defendant does not admit the allegations of the complaint, or that this Consent contains no admission of the allegations (iii) upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint; and (iv) stipulates for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, that the allegations in the complaint are true, and further, that any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under the Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19). If Defendant breaches this agreement, the Commission may petition the Court to vacate the Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

13. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendant to defend against this action. For these purposes, Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good faith settlement.

14. Defendant agrees to waive all objections, including but not limited to, constitutional, timeliness, and procedural objections, to the administrative proceeding that will be

instituted when the judgment is entered.

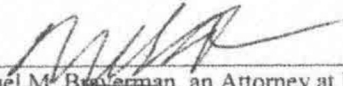
15. Defendant agrees that the Commission may present the Judgment to the Court for signature and entry without further notice.

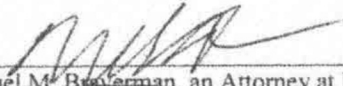
16. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Judgment.

Dated: 9/28/21

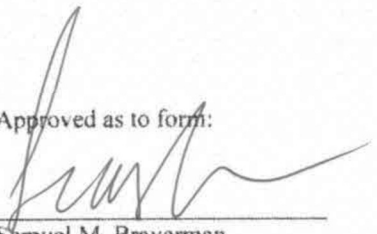
  
Jaeson Birnbaum

On September 28, 2021, Jaeson Birnbaum, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.

  
Michael  
Giordano

  
Samuel M. Braverman, an Attorney at Law of New  
Jersey

Approved as to form:

  
Samuel M. Braverman  
Fasulo, Braverman & Di Maggio, LLP  
225 Broadway, Suite 715  
New York, NY 10007  
(212) 566-6213  
Attorney for Defendant

## **EXHIBIT A**

L9SCbirP

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

21 CR 595 (PAC)

5 JAESON BIRNBAUM,

6 Defendant.

7 -----x

8 New York, N.Y.  
9 September 28, 2021  
2:00 p.m.

10 Before:

11 HON. PAUL A. CROTTY,

12 District Judge

13 APPEARANCES

14 AUDREY STRAUSS,

15 United States Attorney for the  
Southern District of New York

16 BY: DANIEL LOSS

Assistant United States Attorney

17 FASULO BRAVERMAN & DiMAGGIO LLP

18 Attorneys for Defendant

19 BY: MICHAEL GIRODANO

20 ALSO PRESENT:

Postal Inspector Kayla Dobbins

L9SCbirP

(Case called)

MR. LOSS: Good afternoon, Judge. Daniel Loss for the government. I'm joined by Postal Inspector Kayla Dobbins.

MR. GIORDANO: Good afternoon, your Honor. Michael Giordano, standing in for Sam Braverman with the Court's permission, Fasulo Braverman & DiMaggio. Present to my left is Mr. Birnbaum.

THE COURT: Good afternoon. We have a lot of paperwork to get through. We're starting with the presentment and then we'll waive indictment, arraign Mr. Birnbaum, and take his guilty plea; is that correct, Mr. Giordano?

MR. GIORDANO: Yes, your Honor.

THE COURT: Do you have the date and time of the arrest?

MR. LOSS: Yes, Judge. The defendant selfsurrendered this morning to the Postal Inspection Service at approximately 7:10 a.m.

THE COURT: Mr. Birnbaum, I'm Judge Crotty. The purpose of today's proceeding is to advise you of certain rights that you have, inform you of the charges against, consider whether counsel should be appointed for you, decide under what conditions, if any, you should be released.

I'm now going to explain certain constitutional rights that you have. You have the right to remain silent. You're not required to make any statement. Even if you already made

L9SCbirP

1 statements to the authorities, there is no need for you to make  
2 further statements. Any statements that you do make could be  
3 used against you. You have the right to be released, either  
4 conditionally or unconditionally, pending trial, unless I find  
5 that there is no condition that would reasonably assure me your  
6 presence in court and safety of the community.

7 You have the right to be represented by an attorney  
8 during the court proceedings, including this one, and during  
9 all questioning by the authorities. If you cannot afford an  
10 attorney, I will appoint one for you to represent you.

11 You're proceeding with retained counsel; is that  
12 correct, Mr. Birnbaum?

13 THE DEFENDANT: Correct.

14 THE COURT: I have before me an information containing  
15 the charges against Mr. Birnbaum.

16 Have you seen this, Mr. Birnbaum?

17 THE DEFENDANT: Yes.

18 THE COURT: You've had a chance to talk to  
19 Mr. Giordano, Mr. Braverman about it?

20 THE DEFENDANT: Yes.

21 THE COURT: You have the right to a hearing on the  
22 issue of whether you are the person named in the information.  
23 The hearing must be held within 10 days if you are in custody,  
24 or 20 days if you are released on bail.

25 As to bail, is there an agreed upon bail package?

L9SCbirP

1 MR. LOSS: Yes, Judge.

2 THE COURT: What is it?

3 MR. LOSS: The parties would propose the following  
4 conditions:

5 A \$200,000 bond secured by cash or property, surrender  
6 of passport and travel documents, and no new travel  
7 applications. I do understand that the defendant has already  
8 surrendered his passport to postal agents. Travel would be  
9 restricted to the Southern District of New York, Eastern  
10 District of New York, District of New Jersey, and Southern  
11 District of Florida where the defendant resides. Supervision  
12 as directed by pretrial services, including substance abuse  
13 testing and treatment, and mental health testing and treatment  
14 as directed by pretrial services. The defendant would be able  
15 to be released today on his own signature with two weeks to  
16 meet the other conditions, including posting of security.

17 THE COURT: That's correct, Mr. Giordano?

18 MR. GIORDANO: Yes, your Honor, that's correct.

19 THE COURT: I accept the bail conditions. They're  
20 fair and appropriate.

21 Let me warn you, Mr. Birnbaum, if you fail to appear  
22 in court or if you violate any of the conditions of your  
23 release, a warrant will be issued for your arrest, you and  
24 anyone who signs the bond will be responsible for paying it in  
25 the full amount. What is it, Mr. Loss?



L9SCbirP

1 MR. LOSS: \$200,000, Judge.

2 THE COURT: And you may be charged with the separate  
3 crime of bail jumping. In addition, if you commit an offense  
4 while you're released, in addition to the sentence proscribed  
5 for that offense, you'll be sentenced for an additional term of  
6 imprisonment for not more than 10 years if the offense is a  
7 felony, or a term of imprisonment for not more than one year if  
8 the offense is a misdemeanor. This term of imprisonment will  
9 be executed and any other sentence of prison will be executed  
10 when the initial period of imprisonment is completed.

11 Now, for the federal government, I have to advise you  
12 under 5(f) that the prosecution has to comply with its  
13 obligations under Brady v. Maryland and its progeny, to  
14 disclose to the defense all information, whether admissible or  
15 not, that is favorable to the defendant, material either to  
16 guilt or punishment and known to the prosecution.

17 Possible consequences for noncompliance may include  
18 dismissal of individual charges, that is the entire case,  
19 exclusion of evidence, and professional discipline or court  
20 sanctions on the attorneys responsible.

21 I will be entering a written order more fully  
22 describing the obligation and possible consequences of failing  
23 to meet it. And I direct the prosecution to review it and  
24 comply with the order.

25 Does the prosecution confirm that it understands its

L9SCbirP

1 obligations and will fulfill them?

2 MR. LOSS: Yes, your Honor.

3 THE COURT: We will now proceed to the waiver of  
4 indictment and arraignment for Mr. Birnbaum.

5 Have you explained the procedure, Mr. Giordano?

6 MR. GIORDANO: Yes, your Honor. If you don't mind,  
7 can I confer briefly?

8 THE COURT: Sure.

9 MR. GIORDANO: Thank you, your Honor.

10 THE COURT: We can swear Mr. Birnbaum in now.

11 (Defendant sworn)

12 THE COURT: Please be seated. Mr. Birnbaum, can you  
13 state your full name for the record and give us your date of  
14 birth, please.

15 THE DEFENDANT: Jaeson Birnbaum, 2/22/74.

16 THE COURT: How far did you get in school?

17 THE DEFENDANT: JD.

18 THE COURT: You're a lawyer?

19 THE DEFENDANT: Yes.

20 THE COURT: You're admitted to practice?

21 THE DEFENDANT: Yes.

22 THE COURT: Are you currently under the care of a  
23 physician or psychiatrist for any mental or emotional issues?

24 THE DEFENDANT: I am seeing a psychiatrist.

25 THE COURT: Are you taking medication?

L9SCbirP

1 THE DEFENDANT: Yes.

2 THE COURT: How do you feel today?

3 THE DEFENDANT: Good.

4 THE COURT: Do you know what you're doing?

5 THE DEFENDANT: Yes.

6 THE COURT: Mr. Giordano is your lawyer?

7 THE DEFENDANT: Yes.

8 THE COURT: And also, Mr. Braverman is your lawyer, as  
9 well?

10 THE DEFENDANT: Yes.

11 THE COURT: Now, you're proceeding here by way of  
12 information, but you have to understand, Mr. Birnbaum, that you  
13 have the right to be charged by an indictment of a grand jury.  
14 You can waive that right and consent to being charged by  
15 information with the U.S. Attorney. Instead of an indictment,  
16 the felony charges against you are brought by the U.S. Attorney  
17 by the filing of an information. Unless you waive indictment,  
18 you may not be charged with a felony unless a grand jury finds,  
19 by return of an indictment, that there is probable cause to  
20 believe that a crime has been committed and that you committed  
21 it. If you do not waive indictment, the government may present  
22 the case to the grand jury and ask it to indict you. The grand  
23 jury, for your information, is composed of at least 16 and not  
24 more than 23 persons, and at least 12 grand jurors must find  
25 that there is probable cause to believe that you committed the

L9SCbirP

1 crime with which you are charged before you can be indicted.

2 The grand jury might or it might not indict you. If you waive  
3 indictment in front of the grand jury, the case will proceed  
4 against you and the U.S. Attorney's information just as though  
5 you had been indicted.

6 Have you discussed waiving your right to indictment by  
7 the grand jury with your lawyer?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Do you understand your right to be  
10 indicted by a grand jury?

11 THE DEFENDANT: Yes.

12 THE COURT: Have any threats or promises been made to  
13 induce you to waive indictment?

14 THE DEFENDANT: No.

15 THE COURT: Do you wish to waive your right to  
16 indictment by grand jury?

17 THE DEFENDANT: Yes.

18 THE COURT: I'm going to show you a document and ask  
19 you if that's your signature. We'll mark it as Court  
20 Exhibit 1.

21 THE DEFENDANT: Yes, that is my signature.

22 THE COURT: Did you talk to Mr. Giordano before you  
23 signed it?

24 THE DEFENDANT: Yes.

25 THE COURT: I'm going to find that the waiver of

L9SCbirP

1 indictment is knowing and voluntarily made by Mr. Birnbaum.

2 I'm going to accept it and make it part of the court record.

3 You have seen a copy of the information, have you not?

4 THE DEFENDANT: Yes.

5 THE COURT: Have you had a chance to consult with  
6 Mr. Giordano?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you want the indictment read or do you  
9 waive the reading of the indictment?

10 MR. GIORDANO: Yes, your Honor, waive the reading of  
11 the indictment.

12 THE COURT: You're going to waive the reading. You  
13 want to enter your plea now, Mr. Birnbaum?

14 THE DEFENDANT: Yes.

15 THE COURT: What's your plea?

16 THE DEFENDANT: Not guilty.

17 THE COURT: Your plea is not guilty?

18 MR. GIORDANO: Your Honor, are we -- I thought we were  
19 presenting him first and then -- do you need a formal entrance  
20 of a not guilty plea on the arraignment portion or can we move  
21 forward with the plea allocution?

22 THE COURT: Well, I asked him if he wants to plead  
23 guilty or not guilty. He said he wanted to plead guilty, so  
24 I'm now going to allocute him on his guilty plea.

25 MR. GIORDANO: Thank you, your Honor.

L9SCbirP

1 THE COURT: Unless you have an alternative that you  
2 want me to pursue?

3 MR. GIORDANO: No, your Honor. Thank you.

4 THE COURT: So let's go through this again.  
5 Mr. Birnbaum, how do you plead to the charges?

6 THE DEFENDANT: Guilty.

7 THE COURT: Before I accept that plea, I have to ask  
8 you some more questions.

9 Do you understand, first, that you don't have to plead  
10 guilty?

11 THE DEFENDANT: Yes.

12 THE COURT: You can enter a plea of not guilty and  
13 persist in that charge.

14 Do you understand?

15 THE DEFENDANT: Yes.

16 THE COURT: Has Mr. Braverman and Mr. Giordano  
17 explained to you the information?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you know what you're being charged  
20 with?

21 THE DEFENDANT: Yes.

22 THE COURT: Have your attorneys explained to you the  
23 consequences of pleading guilty?

24 THE DEFENDANT: Yes.

25 THE COURT: Are you satisfied with the advice,

L9SCbirP

1 counsel, and representation given to you by your attorneys?

2 THE DEFENDANT: Yes.

3 THE COURT: Let me review some of the rights that  
4 you're giving up just so you understand.

5 I've already explained to you that you do not have to  
6 plead guilty, you can plead not guilty and persist in that  
7 plea.

8 Do you understand?

9 THE DEFENDANT: Yes.

10 THE COURT: You have a right to a trial by jury of 12  
11 people. At trial you would be presumed innocent, the  
12 government would have to prove your guilt beyond a reasonable  
13 doubt. The jury of 12 would have to be unanimous.

14 Do you understand?

15 THE DEFENDANT: Yes.

16 THE COURT: You'd have the right to assistance of  
17 counsel for your defense. If necessary, you could have the  
18 Court appoint counsel at trial and every stage of the  
19 proceeding.

20 Do you understand?

21 THE DEFENDANT: Yes.

22 THE COURT: Your attorney could object to the  
23 government's evidence. You would have the right to see and  
24 hear all the witnesses and have them cross examined in your  
25 defense.

L9SCbirP

Do you understand?

THE DEFENDANT: Yes.

THE COURT: You'd have the right on your part to decline to testify, unless you voluntarily elected to do so in your own defense. You'd have the right to testify and present evidence and to the use of subpoenas and process to compel the attendance of witnesses to testify.

Do you understand?

THE DEFENDANT: Yes.

THE COURT: Should you decide not to testify or put on any evidence, these facts could not be used against you, and the jury would be instructed to not consider your not testifying or your not putting on any evidence.

Do you understand?

THE DEFENDANT: Yes.

THE COURT: That's because you're presumed innocent. By entering a plea of guilty, and if that plea is accepted by the Court, there will be no trial and you would waive or have given up your rights to a trial, as well as those rights associated with the trial that I've just described.

Do you understand?

THE DEFENDANT: Yes.

THE COURT: Do you understand, by pleading guilty, I'll be able to sentence you just as if the jury had returned a guilty verdict after a full trial on the merits?



L9SCbirP

1 Do you understand?

2 THE DEFENDANT: Yes.

3 THE COURT: I'm going to mark as Court Exhibit 2 a  
4 letter dated September 15 to Sam Braverman from the government.

5 THE DEPUTY CLERK: Counsel, do you have extra copies  
6 of the plea?

7 MR. LOSS: Yes.

8 THE COURT: Mr. Birnbaum, is that your signature on  
9 the last page of the document?

10 THE DEFENDANT: Yes.

11 THE COURT: Did you talk to your attorney before you  
12 signed it?

13 THE DEFENDANT: Yes.

14 THE COURT: Did he answer all your questions?

15 THE DEFENDANT: Yes.

16 THE COURT: Did you sign it voluntarily?

17 THE DEFENDANT: Yes.

18 THE COURT: Did anybody make any threats or promises  
19 to induce you to sign this?

20 THE DEFENDANT: No.

21 THE COURT: Is there anything you want to ask  
22 Mr. Giordano about the letter now?

23 THE DEFENDANT: No.

24 THE COURT: Now, count 1 to which you're pleading  
25 guilty charges you with securities fraud in violation of Title

L9SCbirP

1 18, United States Code, Section 781(b), 781(f)(F)(T), Title 17,  
2 Code of Federal Regulations, Section 240.1(b)(10)(B)(5), Title  
3 18 United States Code, Section 2.

4 This carries a maximum term of imprisonment of 20  
5 years, the maximum term of supervised release of 3 years, a  
6 maximum fine of \$5 million, or twice the gross pecuniary gain  
7 derived from the offense or twice the gross pecuniary loss to  
8 someone other than yourself, and a mandatory \$100 special  
9 assessment.

10 Do you understand that those are the maximums that can  
11 be imposed?

12 THE DEFENDANT: Yes.

13 THE COURT: There may be other consequences, as well,  
14 including your ability to practice law.

15 THE DEFENDANT: Yes.

16 THE COURT: Now, on page 1, in addition to pleading  
17 guilty to the offense charged in count 1, you're also agreeing  
18 to the admitting the forfeiture allegations associated with  
19 count 1.

20 Do you understand?

21 THE DEFENDANT: Yes.

22 THE COURT: And you're also agreeing to a schedule of  
23 amounts that you have to pay in restitution in the amount of  
24 \$2,661,072.24.

25 Do you understand?

L9SCbirP

1 THE DEFENDANT: Yes.

2 THE COURT: Did you review with Mr. Braverman and  
3 Mr. Giordano how the guidelines are calculated, the offense  
4 level?

5 THE DEFENDANT: Yes.

6 THE COURT: The offense level is set at 22, and your  
7 criminal history category is 1, resulting in a guideline range  
8 of 41 to 51 months.

9 Do you understand?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand that neither the  
12 probation department or me sitting as a Court is bound by the  
13 stipulation of guidelines that we've just reviewed?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand that the sentence to be  
16 imposed on you will be made by me exclusively? I have power to  
17 sentence you anywhere from zero to the maximum of 20 years.

18 Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: In addition to pleading guilty, you're  
21 also agreeing to not take a direct appeal or collaterally  
22 attack the sentence, any sentence which is within the guideline  
23 range of 41 to 51 months.

24 Do you understand?

25 THE DEFENDANT: Yes.

L9SCbirP

1 THE COURT: At the bottom of page 4, Mr. Birnbaum,  
2 says, do you knowledg that you're accepting this agreement and  
3 deciding to plead guilty because you are, in fact, guilty.

4 Is that a true statement?

5 THE DEFENDANT: Yes.

6 THE COURT: Mr. Loss, is there anything else you wish  
7 me to ask Mr. Birnbaum about this letter?

8 MR. LOSS: No, Judge. Thank you.

9 THE COURT: How about you, Mr. Giordano?

10 MR. GIORDANO: No, your Honor. Thank you.

11 THE COURT: Mr. Loss, could you please rise now and  
12 explain what the essential elements are of count 1 and how you  
13 established these elements beyond a reasonable doubt.

14 MR. LOSS: Yes, Judge. Were this matter to proceed to  
15 trial, the government would have to prove each of the following  
16 three elements beyond a reasonable doubt:

17 First, that the defendant, in connection with the  
18 purchase or sale of securities, did any one or more of the  
19 following:

20 1, employed a device, scheme, or artifice to defraud;

21 Or 2, made an untrue statement of a material fact or  
22 omitted to state a material fact which would mean what was said  
23 under the circumstances misleading;

24 Or 3, engage in an act, practice, or course of  
25 business that operated or would operate as a fraud or deceit

L9SCbirP

1 upon a purchaser or seller.

2 That's the first element.

3 The second element that the government would be  
4 required to prove beyond a reasonable doubt is that the  
5 defendant acted knowingly, willfully, and with the intent to  
6 defraud.

7 The third element is that the defendant knowingly used  
8 or caused to be used any means or instruments, transportation  
9 or communication in interstate commerce or the use of the mails  
10 in furtherance of the fraudulent conduct.

11 The government would also be required to prove venue  
12 in the Southern District of New York by a preponderance of the  
13 evidence.

14 The government proffers that the government would  
15 offer witness testimony, documentary proof, and other evidence  
16 at trial establishing the facts set forth in the information,  
17 and that those facts were proof beyond a reasonable doubt that  
18 Mr. Birnbaum is guilty of the securities charge offense, and  
19 those facts would establish venue in the Southern District of  
20 New York by a preponderance.

21 More specifically, if this case proceeded to trial,  
22 the government would offer witness testimony, documents, email  
23 communications, and other evidence establishing the following:

24 Jaeson Birnbaum was founder and owner of two  
25 litigation finance companies, Cash for Cases and Liberty

L9SCbirP

1 Bridge, which he operated out of Manhattan in the Southern  
2 District of New York and Franklin Lakes, New Jersey.

3 From July 2017 to September 2019, Mr. Birnbaum raised  
4 several million dollars for Cash for Cases from investors who  
5 purchased promissory notes, which were securities, pursuant to  
6 promissory note agreements called investor security agreements,  
7 or ISAs. These ISAs were signed or approved by Birnbaum, and  
8 the ISAs purported to pledge the recoveries of certain lawsuits  
9 that were funded by Cash for Cases as collateral to the  
10 investors, and the ISAs stated that the collateral was in good  
11 standing and free of any liens.

12 In a number of instances, however, those lawsuits were  
13 not actually funded by Cash for Cases, had previously been  
14 pledged to other investors or lenders of Cash for Cases or  
15 Liberty Bridge, had been sold or transferred to other entities,  
16 or have already concluded and thus had no prospects for further  
17 payout.

18 The evidence would show that Mr. Birnbaum was aware of  
19 the foregoing because he signed the relevant agreements with  
20 the prior investors and lenders. He controlled the database  
21 that tracked the status of cases funded by Cash for Cases and  
22 Liberty Bridge, and he exercised primary control over all  
23 aspects of Cash for Cases and Liberty Bridge's finances.

24 Additionally, the evidence would show that  
25 Mr. Birnbaum told prospective investors, orally, that their

L9SCbirP

1 money would be used solely to fund certain lawsuits, and that,  
2 contrary to that representation, he used hundreds of thousands  
3 of dollars of funds from investors for personal purposes,  
4 including the down payment on the purchase of a house and to  
5 make payments to earlier investors and lenders.

6 The evidence that the government would offer at trial  
7 would include, among other things, the testimony of victim  
8 investors, in that, in substance and in part, Mr. Birnbaum told  
9 them, prior to their investments, that their money would be  
10 used by Cash for Cases solely to fund litigations and that the  
11 case recoveries pledged to them as collateral were not being  
12 shared with other investors.

13 In addition, the evidence would include testimony of a  
14 subordinate employee, that Mr. Birnbaum directed him to make  
15 entries into a database that was used to track the status of  
16 litigations funded by Cash for Cases and Liberty Bridge, and,  
17 in particular, that Mr. Birnbaum directed him to change the  
18 status of cases in that database to make it appear that they  
19 were available and pledged as collateral to new investors or  
20 lenders when, in fact, the litigations had concluded and the  
21 applicable payouts had already been made. The evidence would  
22 also include bank account records, funding agreements for  
23 underlying relevant lawsuits, the investor security agreements,  
24 all of which would establish beyond a reasonable doubt that  
25 Mr. Birnbaum committed the securities fraud charged in count 1

L9SCbirP

1 of the information, and which would also establish venue in the  
2 Southern District of New York by a preponderance.

3 THE COURT: Thank you. Do you have a forfeiture order  
4 to sign now or does it come later?

5 MR. LOSS: It will come at sentencing, Judge.

6 THE COURT: The same with restitution?

7 MR. LOSS: Yes, Judge.

8 THE COURT: Mr. Giordano, you and your firm conducted  
9 an investigation of this matter?

10 MR. GIORDANO: Yes, Judge.

11 THE COURT: Do you have any reason why Mr. Birnbaum  
12 should not plead guilty?

13 MR. GIORDANO: No, your Honor.

14 THE COURT: Mr. Birnbaum, could you please rise now  
15 and tell us in your own words what you did.

16 THE DEFENDANT: Sure.

17 MR. GIORDANO: Your Honor, just briefly, I want to  
18 inform the Court I have a single-page, four bullet points for  
19 his allocution.

20 THE COURT: That's fine.

21 THE DEFENDANT: So, in my words, from approximately  
22 2017 to 2019, I offered a product, and that product was  
23 essentially assigning funded or prefunded cases to investors as  
24 a debt instrument. They were pretty much essentially  
25 promissory notes. I later found out that, in order to deal



L9SCbirP

1 with promissory notes, you either have to be registered with  
2 the SEC or the broker dealer, and I was neither of the above.

3 So, for many years, things went very well. Business  
4 and things were great. But, in all environments, things went  
5 quickly out of control and cash was tight and I did wrong  
6 things.

7 THE COURT: What are the wrong things that you did?

8 THE DEFENDANT: I pledged cases that were assigned to  
9 debt for the debt instruments to more than one investor or I  
10 overinflated the potential outcome of a case to investors, and  
11 I was wrong for doing that. And, in fact, I defrauded them by  
12 doing that. And I take responsibility. And I really let  
13 things get out of control when I shouldn't have.

14 As far as interstate commerce and the nexus to the  
15 Southern District, I did have an office in New York. I also  
16 used the mail and email system to obtain clients, as well.  
17 And, again, I truly regret my actions and I hope to make the  
18 victims -- to make the victims as whole as possible, and I just  
19 shouldn't have let this get out of control, but I did.

20 THE COURT: Did you spend any of the money for your  
21 own purposes?

22 THE DEFENDANT: There was some money for my own  
23 purposes, yes.

24 THE COURT: Mr. Loss, is that adequate for your  
25 purposes?

L9SCbirP

1 MR. LOSS: Judge, would it be possible to ask  
2 Mr. Birnbaum if when he acted he did so knowingly, willfully,  
3 and with the intent to defraud.

4 THE COURT: Mr. Birnbaum.

5 THE DEFENDANT: Yes, I did so willfully, knowingly,  
6 and with the intent to defraud.

7 THE COURT: Anything else, Mr. Loss?

8 MR. LOSS: No, Judge.

9 THE COURT: Mr. Giordano, how about you?

10 MR. GIORDANO: Nothing, your Honor.

11 THE COURT: Please be seated, Mr. Birnbaum.

12 It's the finding of the Court in the case of United  
13 States v. Jaeson Birnbaum that Mr. Birnbaum is fully competent  
14 and capable of entering an informed plea. He's aware of the  
15 nature of the charges and the consequences of pleading guilty.  
16 The plea of guilty is knowing, it's voluntary, it's supported  
17 by an independent basis and fact containing each of the  
18 essential elements of the offense. I therefore accept the plea  
19 and the defendant is now adjudged guilty of count 1 in the  
20 information.

21 Do you have a date for sentencing?

22 THE DEPUTY CLERK: January 6th, 2022, at 12 noon.

23 THE COURT: Is that all right with you, Mr. Loss and  
24 Mr. Giordano?

25 MR. LOSS: Yes, it works for the government, Judge.

L9SCbirP

1 Thank you.

2 MR. GIORDANO: Your Honor, if I can briefly check  
3 Mr. Braverman's calendar. Yes, that works for defense, your  
4 Honor. Thank you.

5 THE COURT: Thank you. Anything else?

6 MR. LOSS: Not from the government, Judge. Thank you.

7 MR. GIORDANO: Nothing from defense, your Honor.  
8 Thank you for the courtesy.

9 THE COURT: Very well. The matter is adjourned.

10 \* \* \*